IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

**Civil writ petition No. 2 of 1999.**

**Reserved on 26. 12. 2005.**
Date of decision: .01.2006.

M/s Jerath Electronics Shogi. Petitioner.

**Versus**

The State of H.P. and others. Respondents.

*Coram:*

**The Hon'ble Mr.Justice K C Sood, J.**

***Whether approved for reporting*** **?**[1]

**For the Petitioner :** **Mr. B.N. Misra, Advocate.**

**For the Respondents :** **Mr. P.M. Negi, Assistant Advocate General.**

## K C Sood, J.

The petitioner M/s Jerath Electronics Private Limited is a company incorporated under the Companies Act with its registered office at Shogi in Tehsil and District Shimla. Parkash Chand Jerath, an Ex-servicemen , is its Managing Director.

The petitioner company has approached this Court under Article 226 of the Constitution against the non-release of certain incentives under the Revised Rules for grant of incentives to the Industrial Units in Himachal Pradesh, 1991 ("1991 Rules" for short),

The case of the petitioner Company is that the Managing Director of the Company retired from the Indian Army as Maj. General and set up his unit for manufacture of Digital Telehpne (modern technology) in Electronics and Computer at Shogi in the

[1] ***Whether reporters of Local Papers may be allowed to see the judgment?***

year 1989 and registration certificate was accordingly granted to him. In the year 1991, the respondent-State in the Department of Industries revised the rules regarding grant of incentives to industrial units known as “1991 Rules” under which the petitioner was entitled to subsidy on interest which was denied to the Company inspite of several representations.

According to the petitioner, the State Government had framed rules known as Incentives to new and already established Industries in Himachal Pradesh in the year 1984. These rules were superseded by other set of rules namely 1991 rules (Annexure-P3). “1991 rules” were published in the Extra ordinary Gazette on February 1, 1991. Under Rule 16 of the 1991 rules, certain categories of Industries who are registered as tiny or small scale industrial units and are run by weaker section of Society including Exservicemen are entitled to certain additional incentives/facilities over and above the incentives/facilities admissible in other parts of the rules. Under Rule 16.1( c), the petitioner was entitled to subsidy on interest at the rate of 3% below the prime lending rate but the same was denied to him on untenable grounds. The petitioner also claims a subsidy in interest 1% lower than the normal lending rate under rule 18.1 (d) of the 1991 rules. In all, the petitioner claims subsidy on interest @ 4%,i.e, 3% +1% under 1991 rules. The representations of the petitioner were rejected by the respondents on the ground that petitioner was not entitled to be benefit/facilities under the 1991 rules as he had started commercial production in December, 1989 and he is only entitled to incentives under the 1984 rules.

The contention of the petitioner is that under the 1991 rules, ‘existing units’ are also eligible for the grant of new incentives under these rules.

The company also says that though the claim of the petitioner company was rejected on misinterpretation and misconstruction of 1991 rules, yet the benefit of it was given to other similarly situate Industries namely:

a) M/s Rajesh Polling and Shuttering General Fabrication, Sunni.
b) M/s Raj S.T.D. Booth, Dhalli, Ambala-12.
c) M/s P.S. Photostate Pritam Niwas, Rampur.

Petitioner company prays:

a) Quashing of Rejection letter dated 1.7.1988 (Ann.P6)
b) It be declared entitled to the benefit/incentives under the 1991 Rules (Ann.P3).
c) Appropriate writ and directions to the respondents to release 3+1% subsidy on interest under the 1991 rules to the petitioner with effect from' 1.4.1991 along with interest at the rate of 20.5% till Date of its payment to the petitioner.

The respondents in their return on the affidavit of Director of Industries, Himachal Pradesh has taken the stand that the petitioner company though was registered as a Small Scale Industrial Unit is not entitled to incentives as claimed by him under the relevant rules and was only entitled to the incentives as provided under the 1984 rules. According to the respondents, rule 16.1 (c ) of 1991 rules are applicable only to the Industrial units which came into production on or after April 1, 1991. As the petitioner company commenced production on October 7, 1989, therefore is not covered under the 1991 rules.

It is the further stand of the respondents that under rule 16 of 1991 rules, special interest subsidy is provided to certain weaker sections of Society who set up their tiny or small scale industrial

units after coming into force of the 1991 rules. The existing units are not eligible for the incentives under this rule.

So far the incentives to the similarly situate units, as claimed by the petitioner in the petition, is concerned, the respondents controvert the allegation and say that as these industrial units commenced production after coming into force of the 1991 rules, i.e, on March 30, 1994, August 1, 1997 and October 1, 1992 respectively and therefore, these units are governed by 1991 rules.

Heard Mr. B.N. Misra, Advocate, for the petitioner and Mr. P.M. Negi, Learned Additional Advocate General for the respondents.

It is admitted position that the petitioner unit was set up as a small scale industrial unit and came into production in the year 1989. 1991 rules came into force with effect from April 1, 1991. Rule 2.1 (d) of 1991 rules defines existing units to mean those industrial units which are set up and commenced production before the appointed day. Rule 2 defines the various “expressions” used in the rules. Rule 2.1 (d) defines existing units to mean all those industrial units which were set up and commenced production before the appointed day, i.e, April 1, 1991

Rule 1.2 provides for the eligibility of the industrial units for concession/incentives under the rules. Rule 1.2 (a) relevant for our purpose, reads:

> 1.2 ELIGIBILITY:-
>
> (a) New Industrial Units and Small Scale Service Establishments as defined in these rules shall be eligible for grant of incentives as provided for respectively under these rules. Existing units will be eligible for grantof all new incentives under these rules subject to the

proviso that they shall continue to be governed by 'Revised Rules regarding grant of incentives to new and already established units in Himachal Pradesh, 1984' in respect of all incentives covered under those rules.

(b) xxx xxx xxx

A reading of the above extracted rule 1.2 (a) shows that this rule is not happily worded. A literal reading of this rule does not make sense. Whereas it says that the existing units will be eligible for the grant of all new incentives under this rule, i.e, 1991 but at the same times say that such incentives shall be subject to the condition that the existing units shall continue to be governed by 1984 rules regarding the grant of incentives to new and already established units in Himachal Pradesh in respect of all incentives covered under those rules. Rule 1.2 (a) and 2.1 (d) in this situation have to be harmoniously construed.

A combined reading of these two rules show that the existing units, i.e, all those units which commenced production prior to April 1, 1991 would also be entitled to the additional incentives under the 1991 rules. However, these units shall continue to be governed by 1984 rules so far other matters are concerned.

The petitioner, in view of the provisions of rule 1.2 (a) and 2.1 (d) is indeed entitled to the benefits which are available to new industrial units under the 1991 rules subject to limitations regarding such incentives.

The claim of the petitioner is based on Rule 16 of 1991 rules which provides incentives to special categories of entrepreneurs for setting up tiny and small scale industrial units. Rule 16.1 lays down that special categories, namely, Scheduled Castes, Scheduled Tribes, Women, ex-servicemen, physically handicapped, Antyodya

and I.R.D.P. families entrepreneurs ***setting up new units will be entitled to the additional incentives/facilities which will be over and above the incentives/facilities admissible elsewhere in these rules, unless so specified.***

Sub-rule (c ) of rule 16.1 provides that the rate of interest on term loans would be charged at the rate of 3% below the term lending rate for private sector. The rule reads:

> 16. *Incentives to special categories of entrepreneurs for setting up tiny and S.S.I. units:*
>
> 16.1. *Special categories viz. Scheduled Castes, Scheduled Tribes, women, ex-servicemen, physically handicapped, Antyodya and I.R.D.P. families entrepreneurs* **setting up new units will be entitled to the following additional incentives/facilities which will be over and above the incentives/facilities admissible elsewhere in these rules, unless so specified.**
>
> (a) xx xx xx xx xx
>
> (b) xx xx xx xx xx
>
> (c ) *The rate of interest on term loans will be charged @ 3% below the term lending rate for private sector. The difference between the actual rate of interest chargeable by the term lending institutions (after the availing of refinance from NABARD/SIDBI/IDBI or any other financial institution) will be reimbursed by the State Govt. directly to the Financing Institutions for such entrepreneurs.*

A careful reading of rule 16.1 of 1991 rules shows that special categories which include ex-servicemen who set up new units, i.e, the units which came into production on or after April 1, 1991 will be entitled to additional incentives/facilities admissible over and above incentives/facilities provided under other parts of the Rules unless so specified. The rule makes it clear that special categories of entrepreneurs setting up tiny and small scale industrial units on or after April 1, 1991 are entitled to certain other facilities/incentives over and above the other categories of entrepreneurs. The rule clearly indicates that the incentives under rule 16.1 is available only to the special category of entrepreneurs to which the Managing Director of the petitioner company indeed belongs, provided they have set up their unit on or after April 1, 1991. To get the incentives/facilities under rule 16.1, the definition of existing units and new industrial unit cannot be imported into this rule as the incentives under this provision is not available to all new industrial units but only to special category of entrepreneurs who set up new units after April 1, 1999. The petitioner in this view of the matter is not eligible for incentive of interest rebate under rule 16.1 or for that matter no existing unit which commenced production before April 1, 1991, would be eligible for the incentives under rule 16 of 1991 rules. Only units set up by special category of entrepreneurs on or after April 1,1991 are entitled to the incentives under this rule.

The next contention of the learned counsel for the petitioner is that the petitioner is eligible to 1% rebate in the interest under rule 18.1 (d) of 1991 rules which has also been denied to the petitioner company. Rule 18.1 says that new industrial units if it is a priority industrial unit under Annexure-II would be

eligible to certain incentive packages. Rule 18.1 (d) provides that priority industry would be entitled to 1% rebate on the rate of interest on the normal lending rate. Relevant parts of rule 18, 18.1 and 18.1 (d) reads:

> 18. PRIORITY INDUSTRIES.
>
> 18.1. *New Industrial units falling under Priority Industries given in Annexure-II shall be eligible for the following incentives package.*
>
> (a) xx xx xx
>
> (b) xx xx xx
>
> (c ) xx xx xx
>
> (d) *Such industries, will be charged a rate of interest, which is one percent lower than the normal lending rate, except tiny units for which it will be 3% as per rules 12.1 on re-finance long term industrial loans given by the HPFC, HPSIDC and Nationalized Banks. The Govt. shall provide interest subsidy directly to the State Financial Institutions and Banks concerned*.

The petitioner, it is not in dispute, is a priority industry being electronic computer soft ware industry as provided in Annexure-II to 1991 rules. The petitioner unit being a priority industry and being within the definition of new industrial unit under rule 1.2 (a) for the purpose of eligibility for incentives would be entitled to 1% rebate on the loans than the normal lending rates from April 1, 1991, the appointed day.

No other point is urged before me.

In result, the petition is partly allowed. The claim of the petitioner so far rebate in the interest under rule 16.1 (c ) is concerned, being without foundation is dismissed. The petitioner, however, is entitled to rebate in the interest at 1% of the prime lending rate from April 1, 1991. The respondents are directed to calculate the interest subsidy available to the petitioner under rule 18.1 (d) from April 1, 1991 and shall adjust such subsidy towards the future payment of loan installments by the petitioner to the Financial Institutions. If no amount is due from the petitioner towards the loan to the Financial Institutions, then such subsidy would be paid to him in cash within eight weeks from today.

The petition is disposed of in above terms.

No costs.

(K C Sood)
Judge,

January , 2006.
(BM)